

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JAMES HENRY SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:10CV112
)	
UNITED STATES, DEPARTMENT OF)	
VETERANS AFFAIRS - W.G. BILL)	
HEFNER V.A. MEDICAL CENTER AND)	
DR. JANE DOE,)	<u>NOTICE OF SUBSTITUTION</u>
)	
Defendants.)	

PLEASE TAKE NOTICE that pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988 §§ 5, 6, Pub. L. No. 100-694, 102 Stat. 4563 (1988) (codified at 28 U.S.C. § 2679), the United States is hereby substituted for individual Defendant Dr. Jane Doe and for Defendant United States Department of Veterans Affairs - W.G. Bill Hefner, V.A. Medical Center with respect to the Plaintiff's allegations of negligence. The grounds for this substitution are:

1. The Plaintiff alleges claims of negligent treatment and medical malpractice by an employee of the federal government. Plaintiff further contends that said negligence caused injuries to Plaintiff.

2. Defendant Dr. Jane Doe was a doctor employed by a federally controlled hospital during the time of the events alleged by Plaintiff in his lawsuit.

3. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671 et seq. (1988) ("FTCA"), as amended by the Federal Employees Liability Reform and Tort

Compensation Act of 1988 § 5, Pub. L. No. 100-694, 102 Stat. 4563 (1988), provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the actions of federal employees taken within scope of their office or employment. 28 U.S.C. § 2679(b)(1).

4. The Federal Employees Liability Reform and Tort Compensation Act provides that upon certification by the Attorney General that a federal employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action arising out of the incident shall be deemed an action against the United States, and the United States shall be substituted as sole defendant with respect to those claims. 28 U.S.C. § 2679(d)(1)&(2). The Attorney General has delegated certification authority to the United States Attorneys, who are authorized to make the certifications provided for in 28 U.S.C. 2679(d) with respect to civil actions or proceedings brought against Federal employees in their respective districts. 28 C.F.R. § 15.3 (1990).

5. Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina, has certified that at the time of the conduct alleged in the Complaint, Defendant Doe, was acting within the scope of her federal employment.

For the foregoing reasons, the United States of America should be substituted as the sole defendant with respect to the tort claims alleged.

The Court is respectfully referred to the Certification of Scope of Employment filed together with this notice. A proposed order amending the caption of this case to

reflect the substitution has been submitted.

This the 19th day of May 2010.

Respectfully submitted,

ANNA MILLS WAGONER
United States Attorney

/s/ Joan B. Binkley
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DR. JANE DOE,)	
)	<u>CERTIFICATE OF SERVICE</u>
Defendants.)	

I hereby certify that on May 19, 2010, the foregoing NOTICE OF SUBSTITUTION was electronically filed with the Clerk of the Court using the CM/ECF system and I hereby certify that the document was mailed to the following non-CM/ECF participant:

James Henry Smith
Prison No. 0376874
P.O. Box 2405
Marion, North Carolina 28752

Respectfully submitted,

ANNA MILLS WAGONER
United States Attorney

/s/ Joan B. Binkley
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